

FIRST REGULAR SESSION

SENATE BILL NO. 441

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 24, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1985S.011

AN ACT

To repeal sections 168.104, 168.114, 168.116, 168.118, 168.120, and 168.221, RSMo, and to enact in lieu thereof six new sections relating to public school teachers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 168.104, 168.114, 168.116, 168.118, 168.120, and
2 168.221, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 168.104, 168.114, 168.116, 168.117, 168.118, and 168.120, to
4 read as follows:

168.104. The following words and phrases when used in sections 168.102
2 to 168.130, except in those instances where the context indicates otherwise, mean:

3 (1) "Board of education", the school board or board of directors of a school
4 district[, except a metropolitan school district,] having general control of the
5 affairs of the district;

6 (2) "Demotion", any reduction in salary or transfer to a position carrying
7 a lower salary, except on request of a teacher, other than any change in salary
8 applicable to all teachers or all teachers in a classification;

9 (3) "Indefinite contract", every contract heretofore or hereafter entered
10 into between a school district and a permanent teacher;

11 (4) "Permanent teacher", any teacher who has been employed or who is
12 hereafter employed as a teacher in the same school district for five successive
13 years and who has continued or who thereafter continues to be employed as a
14 teacher by the school district or any supervisor of teachers who was employed as
15 a teacher in the same school district for at least five successive years prior to
16 becoming a supervisor of teachers and who continues thereafter to be employed
17 as a certificated employee by the school district; except that, when a permanent

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 teacher resigns or is permanently separated from employment by a school district,
19 and is afterwards reemployed by the same school district, reemployment for the
20 first school year does not constitute an indefinite contract but if he is employed
21 for the succeeding year, the employment constitutes an indefinite contract; and
22 except that any teacher employed under a part-time contract by a school district
23 shall accrue credit toward permanent status on a prorated basis. Any permanent
24 teacher who is promoted with his consent to a supervisory position including
25 principal or assistant principal, or is first employed by a district in a supervisory
26 position including principal or assistant principal, shall not have permanent
27 status in such position but shall retain tenure in the position previously held
28 within the district, or, after serving two years as principal or assistant principal,
29 shall have tenure as a permanent teacher of that system;

30 (5) "Probationary teacher", any teacher as herein defined who has been
31 employed in the same school district for five successive years or less. In the case
32 of any probationary teacher who has been employed in any other school system
33 as a teacher for two or more years, the board of education shall waive one year
34 of his probationary period;

35 (6) "School district", every school district in this state[, except
36 metropolitan school district as defined in section 162.571, RSMo];

37 (7) "Teacher", any employee of a school district[, except a metropolitan
38 school district,] regularly required to be certified under laws relating to the
39 certification of teachers, except superintendents and assistant superintendents
40 but including certified teachers who teach at the prekindergarten level in a
41 nonmetropolitan public school within a prekindergarten program in which no fees
42 are charged to parents or guardians.

168.114. 1. An indefinite contract with a permanent teacher shall not be
2 terminated by the board of education of a school district except for one or more
3 of the following causes:

4 (1) Physical or mental condition [unfitting him] **making such teacher**
5 **unfit** to instruct or associate with children;

6 (2) Immoral conduct;

7 (3) Incompetency, inefficiency or insubordination in line of duty;

8 (4) Willful or persistent violation of, or failure to obey, the school laws of
9 the state or the published regulations of the board of education of the school
10 district employing [him] **such teacher**;

11 (5) Excessive or unreasonable absence from performance of duties; or

12 (6) Conviction of a felony or a crime involving moral turpitude.

13 2. In determining the professional competency of or efficiency of a
14 permanent teacher, consideration should be given to regular and special
15 evaluation reports prepared in accordance with the policy of the employing school
16 district and to any written standards of performance which may have been
17 adopted by the school board.

168.116. 1. The indefinite contract of a permanent teacher may not be
2 terminated by the board of education until after service upon the teacher of
3 written charges specifying with particularity the grounds alleged to exist for
4 termination of such contract, **notice of the option of the teacher to request**
5 **a preliminary hearing before an impartial hearing officer under section**
6 **168.117**, notice of a hearing **before the board of education** on charges [and]
7 **under section 168.118**, a hearing by the board of education on charges if
8 requested by the teacher, **and a final decision by the board of education.**

9 2. At least [thirty] **sixty** days before service of notice of charges of
10 incompetency, inefficiency, or insubordination in line of duty, the teacher shall
11 be given by the school board or the superintendent of schools warning in writing,
12 stating specifically the causes which, if not removed, may result in
13 charges. Thereafter, both the superintendent, or [his] **the superintendent's**
14 designated representative, and the teacher shall meet and confer in an effort to
15 resolve the matter.

16 3. Notice of **the right to request a preliminary** hearing upon charges
17 **before an impartial hearing officer under section 168.117 or a hearing**
18 **upon the charges before the board of education**, together with a copy of
19 charges, shall be served on the permanent teacher at least twenty days prior to
20 the **proposed** date of the hearing. The notice and copy of the charges may be
21 served upon the teacher by certified mail with personal delivery addressed to
22 [him] **the teacher** at [his] **the teacher's** last known address. If the teacher or
23 [his] **the teacher's** agent does not within ten days after receipt of the notice
24 request a **preliminary hearing before an impartial hearing officer or a**
25 **hearing before the board of education** on the charges, the board of education
26 **of the school district** may, by a majority vote, order the contract of the teacher
27 terminated. If a **preliminary** hearing is requested by either the teacher or the
28 board of education, [it shall take place not less than twenty nor more than thirty
29 days after notice of a hearing has been furnished the permanent teacher] **the**
30 **superintendent shall forward a copy of the notice to the labor and**

31 **industrial relations commission. Within five days after receiving this**
32 **notice of hearing, the labor and industrial relations commission shall**
33 **provide a list of five prospective, impartial hearing officers. Each**
34 **person on the list shall be accredited by a national arbitration**
35 **organization. No one on the list shall be a resident of the school**
36 **district. Within seven days of receipt of the list, the board of education**
37 **of the school district and the teacher, or their legal representatives,**
38 **shall alternately strike one name from the list until only one name**
39 **remains. The board of education of the school district shall proceed**
40 **first with the striking. The labor and industrial relations commission**
41 **shall promulgate uniform standards and rules of procedure for such**
42 **hearings. Such rules and regulations shall, at a minimum, provide for:**

43 **(1) Discovery of names and addresses of persons who may be**
44 **called as expert witnesses at the hearing. The omission of any such**
45 **name shall result in a preclusion of the testimony of such witness in the**
46 **absence of the showing of good cause and the express permission of the**
47 **hearing officer;**

48 **(2) Written interrogatories; and**

49 **(3) The production of relevant documents.**

50 **4. Costs of the hearing shall include the reasonable and**
51 **customary per diem allowance for the hearing officer and the**
52 **reasonable and necessary expenses of the hearing officer.**

53 **[4.] 5. On the filing of charges in accordance with this section, the board**
54 **of education of the school district may suspend the teacher from active**
55 **performance of duty until a final decision is rendered by the board of education**
56 **but the teacher's salary and benefits shall be continued during such suspension,**
57 **provided that the teacher's salary and benefits may be suspended**
58 **following the board's receipt of an advisory opinion from the impartial**
59 **hearing officer finding in favor of dismissal of the teacher. If [a] an**
60 **advisory opinion to terminate a teacher's employment is reversed by**
61 **the board of education or a final decision to terminate a teacher's**
62 **employment by the board of education is appealed, and the decision is reversed,**
63 **the teacher shall be paid [his] the teacher's salary and benefits lost during**
64 **the pending of the [appeal] suspension of salary.**

65 **6. Any rule or portion of a rule, as that term is defined in section**
66 **536.010, RSMo, that is created under the authority delegated in this**
67 **section shall become effective only if it complies with and is subject to**

68 all of the provisions of chapter 536, RSMo, and, if applicable, section
69 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
70 and if any of the powers vested with the general assembly pursuant to
71 chapter 536, RSMo, to review, to delay the effective date, or to
72 disapprove and annul a rule are subsequently held unconstitutional,
73 then the grant of rulemaking authority and any rule proposed or
74 adopted after August 28, 2009, shall be invalid and void.

168.117. If a preliminary hearing is requested on the termination
2 of an indefinite contract by either the teacher or the board of
3 education, it shall be conducted by the hearing officer in accordance
4 with the following provisions:

5 (1) The hearing shall be public unless closed at the request of the
6 teacher and shall be scheduled not less than thirty nor more than forty-
7 five days from the date of selection of the hearing officer, unless the
8 period is shortened or extended by mutual agreement of the teacher
9 and the board of education of the school district;

10 (2) Both the teacher and the person filing charges may be
11 represented by counsel, who may cross-examine witnesses;

12 (3) Testimony at hearings shall be on oath or affirmation
13 administered by the hearing officer, who for the purpose of hearings
14 held pursuant to this section shall have the authority to administer
15 oaths;

16 (4) The hearing officer shall have the power to subpoena
17 witnesses and documentary evidence as provided in section 536.077,
18 RSMo, and shall do so on the motion or at the request of the board of
19 education or the teacher against whom charges have been made. The
20 hearing officer shall hear testimony of all witnesses named by the
21 board of education and the teacher; however, the hearing officer may
22 limit the number of witnesses to be subpoenaed on behalf of the board
23 of education or the teacher to not more than ten;

24 (5) The board of education of the school district shall employ a
25 stenographer who shall make a full record of the proceedings of the
26 hearings and who shall, within ten days after the conclusion thereof,
27 furnish the hearing officer, the board of education of the school
28 district, and the teacher, at no cost to the hearing officer or the
29 teacher, with a copy of the transcript of the record, which shall be
30 certified by the stenographer to be complete and correct. The

31 transcript shall not be open to public inspection, unless the hearing on
32 the termination of the contract was an open hearing or if an appeal
33 from the advisory opinion of the hearing officer is taken by the teacher;

34 (6) All costs of the hearing shall be paid by the board of
35 education of the school district except the cost of counsel for the
36 teacher, except that if the teacher requests the preliminary hearing
37 without the concurrence of the board of education, and the hearing
38 officer's opinion recommends immediate dismissal of the teacher, then
39 the teacher shall pay the reasonable and necessary costs of the hearing
40 other than the cost of counsel for the board of education;

41 (7) No later than thirty days after the conclusion of the hearing,
42 the hearing officer shall provide an advisory opinion as to whether or
43 not the teacher shall be dismissed and shall deliver copies of the
44 decision to both the teacher and the board of education of the school
45 district. The hearing officer shall also have the authority to make an
46 advisory opinion that a teacher be given appropriate discipline, but not
47 be dismissed. In the case of a charge of incompetency, inefficiency, or
48 insubordination in the line of duty, the hearing officer shall also have
49 the option of recommending an extension of the period in which the
50 superintendent and the teacher shall meet and confer in an effort to
51 resolve the matter as provided in subsection 2 of section 168.116.

168.118. 1. The board of education shall, in the same manner as
2 provided in section 168.116 and within thirty days of receipt of any
3 advisory opinion or recommendation from a hearing officer pursuant
4 to section 168.117, provide notice to the teacher of the board of
5 education's intention to accept or reject each relevant provision of such
6 advisory opinion or recommendation and of the opportunity for the
7 teacher to request and receive a hearing thereon before the board of
8 education before a final decision is made by the board of education.

9 2. If a board of education hearing is requested on the termination of
10 an indefinite contract it shall be conducted by the board of education and shall
11 be conducted in accordance with the following provisions:

12 (1) The hearing shall be public unless closed at the request of the
13 teacher, and shall be scheduled not less than thirty nor more than
14 forty-five days from the date the teacher requests a board of education
15 hearing, unless the period is shortened or extended by mutual
16 agreement of the teacher and the board of education of the school

17 **district;**

18 (2) Both the teacher and the person filing charges may be represented by
19 counsel who may cross-examine witnesses;

20 (3) Testimony at hearings shall be on oath or affirmation administered by
21 the president of the board of education, who for the purpose of hearings held
22 under sections 168.102 to 168.130 shall have the authority to administer oaths;

23 (4) The [school] board **of education** shall have the power to subpoena
24 witnesses and documentary evidence as provided in section 536.077, RSMo, and
25 shall do so on its own motion or at the request of the teacher against whom
26 charges have been made. **The complete record of the preliminary hearing
27 and advisory opinion or recommendation of the hearing officer, if a
28 preliminary hearing was conducted, shall be a part of the record of the
29 board of education hearing.** The [school] board **of education** shall hear
30 testimony of all witnesses named by the teacher; however, the school board may
31 limit the number of witnesses to be subpoenaed on behalf of the teacher to not
32 more than ten;

33 (5) The board of education shall employ a stenographer who shall make
34 a full record of the proceedings of the hearings and who shall, within ten days
35 after the conclusion thereof, furnish the board of education and the teacher, at no
36 cost to the teacher, with a copy of the transcript of the record, which shall be
37 certified by the stenographer to be complete and correct. The transcript shall not
38 be open to public inspection, unless the hearing on the termination of the contract
39 was an open hearing or if an appeal from the decision of the board is taken by the
40 teacher;

41 (6) All costs of the hearing shall be paid by the school board except the
42 cost of counsel for the teacher;

43 (7) The decision of the board of education resulting in the demotion of a
44 permanent teacher or the termination of an indefinite contract shall be by a
45 majority vote of the members of the board of education and the decision shall be
46 made within seven days after the transcript is furnished them. A written copy
47 of the decision shall be furnished the teacher within three days thereafter.

168.120. 1. The teacher shall have the right to appeal from the **final**
2 decision of the board of education to the circuit court of the county **or the circuit**
3 **court of a city not within a county** where the employing school district is
4 located. The appeal shall be taken within fifteen days after service of a copy of
5 the **final** decision of the board of education upon the teacher, and if an appeal is

6 not taken within the time, then the **final** decision of the board of education shall
7 become final.

8 2. The appeal may be taken by filing notice of appeal with the board of
9 education, whereupon the board of education, under its certificate, shall forward
10 to the court all documents and papers on file in the matter, together with a
11 transcript of the evidence, the findings and the **final** decision of the board of
12 education, which shall thereupon become the record of the cause. Such appeal
13 shall be heard as provided in chapter 536, RSMo.

14 3. Appeals from the circuit court shall be allowed in the same manner as
15 in civil actions, except that the original transcript prepared and filed in the
16 circuit court by the board of education, together with a transcript of the
17 proceedings had in the circuit court, shall constitute the transcript on appeal in
18 the appellate court. The board of education shall make available, to the parties,
19 copies of any transcript prepared and filed by it in the circuit court and upon
20 final determination of the cause in the appellate court the original record of the
21 board of education filed as a part of the transcript on appeal shall be certified
22 back to the board of education by the appellate court. In all appeals from the
23 board of education or circuit court the costs thereof shall be assessed against the
24 losing party as provided by law in civil cases. All appeals to the circuit court and
25 appellate courts shall have precedence over all cases except election contests.

26 4. If the circuit court finds for the teacher, **[he] the teacher** shall be
27 restored to permanent teacher status and shall receive compensation for the
28 period during which **[he] the teacher** may have been suspended from work, and
29 such other relief as may be granted by the court.

[168.221. 1. The first five years of employment of all
2 teachers entering the employment of the metropolitan school
3 district shall be deemed a period of probation during which period
4 all appointments of teachers shall expire at the end of each school
5 year. During the probationary period any probationary teacher
6 whose work is unsatisfactory shall be furnished by the
7 superintendent of schools with a written statement setting forth
8 the nature of his incompetency. If improvement satisfactory to the
9 superintendent is not made within one semester after the receipt
10 of the statement, the probationary teacher shall be dismissed. The
11 semester granted the probationary teacher in which to improve
12 shall not in any case be a means of prolonging the probationary

13 period beyond five years and six months from the date on which the
14 teacher entered the employ of the board of education. The
15 superintendent of schools on or before the fifteenth day of April in
16 each year shall notify probationary teachers who will not be
17 retained by the school district of the termination of their
18 services. Any probationary teacher who is not so notified shall be
19 deemed to have been appointed for the next school year. Any
20 principal who prior to becoming a principal had attained
21 permanent employee status as a teacher shall upon ceasing to be
22 a principal have a right to resume his or her permanent teacher
23 position with the time served as a principal being treated as if such
24 time had been served as a teacher for the purpose of calculating
25 seniority and pay scale. The rights and duties and remuneration
26 of a teacher who was formerly a principal shall be the same as any
27 other teacher with the same level of qualifications and time of
28 service.

29 2. After completion of satisfactory probationary services,
30 appointments of teachers shall become permanent, subject to
31 removal for any one or more causes herein described and to the
32 right of the board to terminate the services of all who attain the
33 age of compulsory retirement fixed by the retirement system. In
34 determining the duration of the probationary period of employment
35 in this section specified, the time of service rendered as a
36 substitute teacher shall not be included.

37 3. No teacher whose appointment has become permanent
38 may be removed except for one or more of the following causes:
39 immorality, inefficiency in line of duty, violation of the published
40 regulations of the school district, violation of the laws of Missouri
41 governing the public schools of the state, or physical or mental
42 condition which incapacitates him for instructing or associating
43 with children, and then only by a vote of not less than a majority
44 of all the members of the board, upon written charges presented by
45 the superintendent of schools, to be heard by the board after thirty
46 days' notice, with copy of the charges served upon the person
47 against whom they are preferred, who shall have the privilege of
48 being present, together with counsel, offering evidence and making

49 defense thereto. Notifications received by an employee during a
50 vacation period shall be considered as received on the first day of
51 the school term following. At the request of any person so charged
52 the hearing shall be public. The action and decision of the board
53 upon the charges shall be final. Pending the hearing of the
54 charges, the person charged may be suspended if the rules of the
55 board so prescribe, but in the event the board does not by a
56 majority vote of all the members remove the teacher upon charges
57 presented by the superintendent, the person shall not suffer any
58 loss of salary by reason of the suspension. Inefficiency in line of
59 duty is cause for dismissal only after the teacher has been notified
60 in writing at least one semester prior to the presentment of charges
61 against him by the superintendent. The notification shall specify
62 the nature of the inefficiency with such particularity as to enable
63 the teacher to be informed of the nature of his inefficiency.

64 4. No teacher whose appointment has become permanent
65 shall be demoted nor shall his salary be reduced unless the same
66 procedure is followed as herein stated for the removal of the
67 teacher because of inefficiency in line of duty, and any teacher
68 whose salary is reduced or who is demoted may waive the
69 presentment of charges against him by the superintendent and a
70 hearing thereon by the board. The foregoing provision shall apply
71 only to permanent teachers prior to the compulsory retirement age
72 under the retirement system. Nothing herein contained shall in
73 any way restrict or limit the power of the board of education to
74 make reductions in the number of teachers or principals, or both,
75 because of insufficient funds, decrease in pupil enrollment, or
76 abolition of particular subjects or courses of instruction, except that
77 the abolition of particular subjects or courses of instruction shall
78 not cause those teachers who have been teaching the subjects or
79 giving the courses of instruction to be placed on leave of absence as
80 herein provided who are qualified to teach other subjects or courses
81 of instruction, if positions are available for the teachers in the
82 other subjects or courses of instruction.

83 5. Whenever it is necessary to decrease the number of
84 teachers because of insufficient funds or a substantial decrease of

85 pupil population within the school district, the board of education
86 upon recommendation of the superintendent of schools may cause
87 the necessary number of teachers beginning with those serving
88 probationary periods to be placed on leave of absence without pay,
89 but only in the inverse order of their appointment. Nothing herein
90 stated shall prevent a readjustment by the board of education of
91 existing salary schedules. No teacher placed on a leave of absence
92 shall be precluded from securing other employment during the
93 period of the leave of absence. Each teacher placed on leave of
94 absence shall be reinstated in inverse order of his placement on
95 leave of absence. Such reemployment shall not result in a loss of
96 status or credit for previous years of service. No new appointments
97 shall be made while there are available teachers on leave of
98 absence who are seventy years of age or less and who are
99 adequately qualified to fill the vacancy unless the teachers fail to
100 advise the superintendent of schools within thirty days from the
101 date of notification by the superintendent of schools that positions
102 are available to them that they will return to employment and will
103 assume the duties of the position to which appointed not later than
104 the beginning of the school year next following the date of the
105 notice by the superintendent of schools.

106 6. If any regulation which deals with the promotion of
107 either teachers is amended by increasing the qualifications
108 necessary to be met before a teacher is eligible for promotion, the
109 amendment shall fix an effective date which shall allow a
110 reasonable length of time within which teachers may become
111 qualified for promotion under the regulations.]

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